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09/995,483	11/28/2001	Woodrow W. Pearce	45955/CM/P369	2251

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3781

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/995,483	Applicant(s) PEARCE, WOODROW W.	
	Examiner ROBIN HYLTON	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-28,30-42,57 and 114 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10 and 31 is/are allowed.
- 6) ☒ Claim(s) 1,4-9,11-19,21-28,30,32-42,57 and 114 is/are rejected.
- 7) ☒ Claim(s) 3 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3781

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: “when the concentric circular ridges are registered with the rim”.

Claim Objections

2. Claim 20 is objected to because of the following informalities: in line 1, “first” is misspelled. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase “each a slot in each ridge” is awkward.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1,4,5,14-17, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Nishioka et al. (US 4,036,386).

The circular bottle inherently has a radius extending from a center of the mouth to the outer perimeter of the mouth rim. The concentric circular ridges **17** and **18** each have a slot extending across the ridges for defining a pathway across the rim with the concentric ridges are registered with the rim.

6. Claims 8,9,18,19,21, 24 and 57 are rejected under 35 U.S.C. 102(b) as being anticipated by Lepore (US 3,147,876).

Art Unit: 3781

The grooves **18** extend between a first point and a second point exterior to the rim when the cap is secured to the bottle.

Claim Rejections - 35 USC § 103

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nishioka in view of Dubach (US 5,257,708).

Nishioka discloses the claimed cap except for the top portion being hingedly coupled to the annular wall. It is noted that protrusions 27 are provided on the liner disc to maintain its engagement with the cap skirt (col. 5, lines 58-65).

Dubach teaches it is known to provide a hinge coupling between the top portion and the annular wall of a cap.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of hingedly coupling the top portion to the annular wall of Nishioka. Doing so allows for removal of the associated container contents without removal of the cap from the associated bottleneck.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nishioka in view of Peters (US 5,542,585).

Nishioka discloses the claimed cap except for a movable spout.

Peters teaches it is known to provide a cap having a downwardly depending plug seal and a movable spout.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a movable spout to the cap of Nishioka. Doing so allows for removal of the associated container contents without removal of the cap from the associated bottleneck.

Art Unit: 3781

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lepore in view of Dubach (US 5,257,708).

Lepore discloses the claimed cap except for the top portion being hingedly coupled to the annular wall.

Dubach teaches it is known to provide a hinge coupling between the top portion and the annular wall of a cap.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of hingedly coupling the top portion to the annular wall of Lepore. Doing so allows for removal of the associated container contents without removal of the cap from the associated bottleneck.

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lepore in view of Peters (US 5,542,585).

Lenore discloses the claimed cap except for a movable spout.

Peters teaches it is known to provide a cap having a downwardly depending plug seal and a movable spout.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a movable spout to the cap of Lepore. Doing so allows for removal of the associated container contents without removal of the cap from the associated bottleneck.

11. Claims 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishioka.

Art Unit: 3781

Nishioka teaches the claimed method except is silent regarding solidifying the liquid to block the pathway through the groove.

The examiner takes Official notice that solidifying the liquid is a function of the property of the liquid material, since it known that a viscous liquid can and does solidify when found in small amounts in a cap groove.

12. Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gora (US 2,739,724) in view of Dukess (US 3,963,845).

Gora teaches a cap having a liner ridge **28** seated on a neck rim **33** at an innermost edge. Gora does not disclose threads.

Dukess discloses the equivalence of threaded, crown, snap-on closure caps (column 2, lines 20-23) for securement to a bottleneck.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute a known threaded engagement for the crown engagement of Gora. Doing so allows for opening the bottle without the use of a special tool.

Gora discloses the claimed invention except for a plurality of slots. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a planarity of slots across the ridge, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Doing so provides multiple escape paths for the excess pressure in the associated sealed bottle.

Wherein the liner of Gora is not provided by a semi-hard material, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the liner of a semi-hard material, since it has been held to be within the general skill of a worker in

Art Unit: 3781

the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

13. Claims 32-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishioka et al. (US 4,036,386) in view of Carpenter et al. (US 3,589,545).

Nishioka teaches a cap having a plurality of ridges on an inner surface of the top wall, each ridge having a slot therethrough, and a liner having a central aperture. Nishioka does not teach the liner has a plurality of ridges on a first surface facing the inner surface of the top wall.

Carpenter discloses a cap having a liner with a plurality of ridges on a first surface facing the inner surface of the top wall.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the ridges and slots on a first surface of the liner of Nishioka, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167. Doing so allows for an alternative structural relationship of a venting cap and sealing liner known in the art.

Wherein the liner of Gora is not provided by a semi-hard material, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the liner of a semi-hard material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

14. Claims 11 and 114 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patton (US 3,045,854) in view of Nishioka.

Art Unit: 3781

Patton discloses a cap having groove on the sealing liner to allow venting of the associated sealed container. Patton does not disclose the groove is *on* the inner surface of the cap top wall.

Nishioka discloses a cap having a sealing liner with a central aperture and slotted venting structure on the inner surface of the cap top wall.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the ridges and slots on a first surface of the liner of Patton, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167. Doing so allows for an alternative structural relationship of a venting cap and sealing liner known in the art wherein the liner can provide other known properties and have a smaller outer diameter to save material.

Allowable Subject Matter

15. Claims 10 and 31 are allowed.

16. Claims 3 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

17. Applicant's arguments filed December 14, 2007 have been fully considered but they are not persuasive.

The patent to Lepore discloses in Fig. 2 that the groove has a first point and a second point both extending beyond the rim of the bottle. Applicant argues the first point and the second point do not both extend "outside" the rim. Wherein the outside of the rim is not set forth in the instant claims, the term "outside" is taken to mean the points extend outside of the thickness of the bottle rim. Thus, the claim limitation is met by the prior art.

Art Unit: 3781

The patent to Nishioka defines a radius extending from a center of the bottle mouth to an outer perimeter of the rim to the degree set forth in the instant claims. A radius is simply a line extending from a longitudinal center of the bottle to the rim. Applicant has not set forth any structure to differentiate the instant radius from the commonly held definition of a radius. The radius is inherently intersected by the concentric ridges as the ridge crosses the radius. The slots of the ridges provide a pathway for gas release.

The method of using the claimed cap system is inherent in the structure and with the knowledge of one of ordinary skill in the art as described above. Additionally, the cap of Lepore is torqued as it is applied to the container.

18. Applicant's arguments with respect to some of the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

19. In view of the new grounds of rejection, this Office action is made non-final.

20. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

21. In order to reduce pendency and avoid potential delays, Group 3720/80 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify

Art Unit: 3781

the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720/80 will be promptly forwarded to the examiner.

22. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday, Tuesday, Thursday, and Friday from 8:00 a.m. to 2:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
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August 10, 2009

/Robin A. Hylton/
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